

# In the United States Court of Federal Claims

## OFFICE OF SPECIAL MASTERS

No. 20-1551V

UNPUBLISHED

DEBORAH WHARTON,

Petitioner,

v.

SECRETARY OF HEALTH AND  
HUMAN SERVICES,

Respondent.

Chief Special Master Corcoran

Filed: February 15, 2022

Special Processing Unit (SPU);  
Ruling on Entitlement; Concession;  
Table Injury; Influenza (Flu) Vaccine;  
Shoulder Injury Related to Vaccine  
Administration (SIRVA)

*Maximillian J. Muller, Muller Brazil, LLP, Dresher, PA, for Petitioner.*

*Jeremy Fugate, U.S. Department of Justice, Washington, DC, for Respondent.*

### **RULING ON ENTITLEMENT<sup>1</sup>**

On November 9, 2020, Deborah Wharton filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*<sup>2</sup> (the “Vaccine Act”). Petitioner alleges that she suffered left shoulder injuries related to vaccine administration (SIRVA), resulting from the influenza (flu) vaccine she received on October 3, 2019. Petition at 1. Petitioner further alleges that the vaccine was administered in the United States, her symptoms lasted for more than six months, and neither she, nor any other party, has ever filed an action for her vaccine-related injury. Petition at 1,3. The case was assigned to the Special Processing Unit of the Office of Special Masters.

On January 24, 2022, Respondent filed his Rule 4(c) report in which he concedes that Petitioner is entitled to compensation in this case. Respondent’s Rule 4(c) Report at

<sup>1</sup> Because this unpublished Ruling contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims’ website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the Ruling will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

<sup>2</sup> National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755. Hereinafter, for ease of citation, all section references to the Vaccine Act will be to the pertinent subparagraph of 42 U.S.C. § 300aa (2012).

1. Respondent found that Petitioner suffered a SIRVA of the left shoulder as defined by the Vaccine Injury Table. *Id.* at 3. Specifically, Respondent determined that “[P]etitioner had no recent history of pain, inflammation, or dysfunction of her left shoulder; the onset of pain occurred within 48 hours after receipt of an intramuscular vaccination; the pain was limited to the shoulder where the vaccine was administered; and, no other condition or abnormality, such as brachial neuritis, has been identified to explain petitioner’s left shoulder symptoms.” *Id.* at 3-4 (citations omitted). Respondent concluded that “[P]etitioner has satisfied all legal prerequisites for compensation under the Vaccine Act.” *Id.* at 4.

**In view of Respondent’s position and the evidence of record, I find that Petitioner is entitled to compensation.**

**IT IS SO ORDERED.**

**s/Brian H. Corcoran**  
Brian H. Corcoran  
Chief Special Master